

VOL. XX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on March 28, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PIAGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
(716)332-3560

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I N D E X

PAGE

VERDICT

4241

1 (Jury not present in the courtroom.)

2 THE CLERK: Criminal case
3 number 2010-CR-219, United States of America versus
4 Tonawanda Coke and Mark Kamholz.

5 THE COURT: Sorry for the slight delay.
6 Are there any preliminary matters?

7 The attorneys and parties are present for the
8 record.

9 MR. PERSONIUS: No, your Honor.

10 MR. MANGO: No, your Honor.

11 MR. LINSIN: None on behalf of Tonawanda,
12 your Honor.

13 THE COURT: Okay. Okay. We have a new
14 attorney with us, Mr. Glasner, from what I
15 understand. He's here. Okay.

16 Chris, if the jury's here we'll have them
17 brought in, please.

18 COURT SECURITY OFFICER: Sure.

19 (Jury seated.)

20 THE COURT: Good morning.

21 THE JURY: Good morning.

22 THE COURT: Please have a seat. Okay. As
23 you can see, ladies and gentlemen, and on our
24 behalf, we're glad to see you here this morning.
25 The attorneys and parties are present. And the day

1 has come, okay. We're going to ask you now -- and
2 everything is ready to get you started to -- you
3 can take your notebooks in, if you choose to do
4 that, to the jury deliberation room. But, you
5 know, use it appropriately from the standpoint of
6 if there are differing entries that some of you may
7 have made, talk it out, work it out. What's not
8 evidence in terms of the summations, if any of you
9 jotted some notes, and I saw a few of you take
10 notes, make sure you consider that as nonevidence,
11 but as a guide to maybe the direction that you
12 think the deliberations should go.

13 I know you take this case seriously. And, you
14 know, your duty now is very serious. You get to
15 decide this case now. And you have to do it
16 according to the law and following the instructions
17 that I gave you the last couple of days.

18 Your verdict must be unanimous. You must
19 consider each count separately and as to each
20 defendant separately, understanding that the
21 defendants are cloaked with the presumption of
22 innocence, which never leaves until and if you find
23 that one or more of the defendants on any one or
24 more of the counts has been proven guilty beyond a
25 reasonable doubt.

1 It's a task that you've worked very hard to get
2 to this point. And I know you've heard me mention
3 many times, it's going to take the application of
4 your common sense, your experience, your
5 intelligence to developing a methodology to get
6 into the indictment, get it resolved in light of
7 those fact issues that only you can decide, because
8 you now become the judges of the facts.

9 I think you know how the rules should work, and
10 that from here on out the communications, if there
11 are any, should be in writing between your
12 foreperson and me, and then if necessary, I join
13 the attorneys and parties into the discussion
14 before I respond, or until we bring you out here
15 for further discussions.

16 Do your best to work through everything. And
17 it takes respect for each other's points of views.
18 And you've come to know each other, I think, pretty
19 well over the course of the 30-plus days that all
20 of us have been together. And that's a good thing,
21 because when you spend that much time together, and
22 when you've been as apparently committed as you
23 have been to this particular case, it should allow
24 you to do what everybody selected you to do, and
25 that is to return a unanimous verdict in this case.

1 Because, again, as you've heard me say, nobody
2 knows more about this case than all of you.

3 So, we're about ready to send you out. It will
4 take just a few moments to wheel in the cart and
5 bring in a couple of exhibits following that into
6 your jury deliberation room. That will be done
7 while you're there.

8 We have to swear Chris in, the court security
9 officer, by separate oath. We will do that now,
10 and then he will be responsible for you in a
11 different capacity during your deliberations.

12 We also bid farewell to our two alternates,
13 Mr. Carlson and Mr. Demmer, and we thank you for
14 your service. You know, I know it's a lot of time
15 to invest and not get to deliberate. But, frankly,
16 you played a critical role. We appreciate that.
17 We thank you very much for that. We ask you please
18 to maintain the confidentiality, the silence, all
19 of that not only in respect for the system, but for
20 your fellow jurors. And I wish I could have let
21 you, if you had the opportunity to, to sleep in
22 today, but we'd never know. So we did need you to
23 come here. Frankly, we're very grateful that you
24 invested the time and the effort that you did.
25 Thank you very much. And we have to have you leave

1 now. And if you'd leave your notebooks behind, we
2 will collect those as well. Thank you very much,
3 gentlemen. We appreciate it.

4 (Alternate jurors excused.)

5 THE COURT: I didn't tell Chris he could
6 go, but I hope he comes back. Maybe he doesn't
7 want to get sworn in, I don't know.

8 You had us worried there for a minute, Chris.
9 We didn't know if you were coming back.

10 COURT SECURITY OFFICER: I didn't know if
11 I was part of their crew.

12 THE COURT: Colleen, if you could
13 administer the oath, please.

14 (Court security officer oath
15 administered.)

16 THE COURT: Okay. If you listen to the
17 oath, it's somewhat harsh. It kind of ensures that
18 you're going to get some work done without meat or
19 drink, but we will make exceptions for that.

20 We are going to have some lunch brought in for
21 you today as well. Okay. And, you know, you're
22 free to eat it or not. And it's sort of an
23 incentive to keep you fortified so we can get you
24 through this process, and, you know, it's -- it's
25 kind of our thanks for, you know, what you are

1 doing. And hopefully it will enable you, with
2 maybe your own lunch or whatever, to work through
3 the process as efficiently as you can, keeping in
4 mind what we've said so many times that this is a
5 very important case to both sides. Okay.

6 Are you ready? Okay. It's all up to you. You
7 are the judges of the facts. Please start your
8 deliberations, and go forward, and then we'll wait
9 to hear from you when you tell us you have your
10 unanimous verdict. Okay. Thank you very much very
11 much, folks.

12 (Jury excused from the courtroom.)

13 THE COURT: Okay. If you will keep
14 Colleen posted in terms of your contact numbers,
15 where you are. Please make every effort, once we
16 do contact you, to get back here as expeditiously
17 as possible.

18 MR. LINSIN: Your Honor, could I just make
19 one inquiry?

20 THE COURT: Sure.

21 MR. LINSIN: With respect to the
22 alternates, and obviously I'm hopeful this
23 circumstance doesn't arise. But in the event of
24 the disability of one of the 12 sitting jurors, I
25 presume the Court has methods of contacting the

1 alternates to bring them back in?

2 THE COURT: Yes, we do.

3 MR. LINSIN: Thank you very much.

4 THE COURT: Frankly, I don't think it's
5 right to keep them here, but we can track them down
6 with their locator information.

7 MR. LINSIN: All right. Thank you, your
8 Honor.

9 THE COURT: Anything else?

10 MR. LINSIN: I guess the only other just
11 practical question, your Honor, is how long -- has
12 the Court made a judgment on how long you would
13 have the jury deliberate if we do not wind up with
14 a verdict before the end of the day? Do we have a
15 time period in mind when we should plan to be back
16 here in the event we have not received the phone
17 call, I guess that's the easiest way to put it.

18 THE COURT: Well, I would want you here,
19 in the event that nothing happens all day, to be
20 back here before 5:00 o'clock.

21 MR. LINSIN: All right.

22 THE COURT: And what I would then do is I
23 would discuss with you what your thoughts are about
24 continuing the deliberations. I also would like to
25 get a feel from the jury. Sometimes they will

1 communicate that in terms of whether they're ready
2 to hang it up for the day and move forward, or if
3 they'd like to stay. And I'll try to accommodate
4 whatever I sense is their preference, if that's
5 okay with you. But I'll discuss it with you first.

6 MR. LINSIN: All right. Thank you, your
7 Honor.

8 THE COURT: Great. Okay.

9 MR. LINSIN: Oh, can we get a copy of the
10 final charge? There were a couple of modifications
11 that were discussed. A copy of the charge that's
12 actually going back to the jury.

13 THE COURT: Yes. It will take a little
14 bit.

15 MR. LINSIN: Maybe later -- whenever we
16 come back later in the day, that would be fine.

17 THE COURT: Yeah, we can have it ready for
18 you. What do you think?

19 LAW CLERK: Whenever.

20 THE COURT: Half an hour?

21 MR. LINSIN: Sure.

22 THE COURT: All right. Okay.

23 MR. LINSIN: Thank you, your Honor.

24 (Short recess was taken.)

25 (Jury not present in the courtroom.)

1 THE COURT: Okay. Colleen, if you would
2 call the case, please.

3 THE CLERK: Criminal case number
4 2010-CR-219, United States versus Tonawanda Coke
5 and Mark Kamholz.

6 THE COURT: And the attorneys and parties
7 are back present. May I have the note, please?
8 Okay. For your information, I received a note
9 about 12:51. Then I set Colleen to contacting
10 everybody. And I thought I'd read the note to you.
11 And you should have been distributed a copy of
12 6 NYCRR 214.10. The note is from and signed by the
13 person that I believe is the foreperson, that's
14 juror number 9, and that's Dennis McDonell. Okay.

15 The note reads as follows: Dated today. The
16 note's timed at 12:50. And the note reads: "Can
17 we see T-6 NYCRR 214.10(a) and NYCRR 10(b)." And
18 then in paren, "Or if we have them, where are
19 they", question mark, close paren. My favorite
20 part of the note, for whatever that's worth.

21 MR. LINSIN: Could I ask you to reread the
22 numbers?

23 THE COURT: Yes, it's Title 6 I think
24 what's 214.10(a), and 214.10(b). I guess -- I'm
25 assuming it's 214.10 and then sub A and 214.10 sub

1 B. And that's what I distributed to you. And I'd
2 like to get your views on what you suggest that I
3 do in response.

4 I'll tell you what I think, and then you tell
5 me what you think. And I don't view this as
6 problematic, responding to this request. I could
7 read both subsections of Title 10 -- or of Title 6
8 that are requested. But it would seem to me if I
9 do that, they should, in any event get this title
10 and the sections. So I don't know how you want to
11 proceed. I'll listen to what anybody else has to
12 say. If you want me to read it, I will and then
13 give them a copy, or just send in a copy with a
14 note saying this is pursuant to your request.
15 Thank you.

16 MR. MANGO: We're good with if you want to
17 send in the copy, your Honor, or however you want
18 to proceed.

19 MR. LINSIN: We agree. That seems like it
20 would be the most efficient, and just -- with just
21 that indication, and they can take as a, you know,
22 a supplemental provision to the Court's legal
23 instructions. You know, something like that.

24 THE COURT: I think what I'll say though
25 is I've consulted with the attorneys, and as you

1 requested, I am enclosing the Title 6 provision.

2 Okay. Does that work for everybody?

3 MR. PERSONIUS: It does for us, your
4 Honor.

5 THE COURT: Okay. I'll do that forthwith.
6 I'll get it in to the jury, and then we'll keep you
7 posed as things go forward. All right.

8 MR. LINSIN: Thank you, your Honor.

9 MR. MANGO: Thank you, your Honor.

10 MR. PERSONIUS: Thank you very much.

11 (Short recess was taken.)

12 (Jury not present in the courtroom.)

13 THE COURT: Colleen, if you call the case,
14 please.

15 THE CLERK: Criminal case 2010-CR-219,
16 United States versus Tonawanda Coke and Mark
17 Kamholz.

18 THE COURT: Okay. Good afternoon. The
19 record will reflect that the attorneys and parties
20 are back present. I did receive a note from the
21 jury, and virtually immediately after receipt I did
22 contact everybody. The time was 3:25 p.m. And
23 this is our first opportunity to assemble after
24 notification by note. The note is timed. It's
25 dated today -- but it's timed 3:20. So it took a

1 little time to get it in the envelope and get it
2 walked over to chambers.

3 It's not entirely clear to me what the jury is
4 saying. I believe we have a verdict. That's my
5 assessment. But, the note reads as follows. "We
6 are done." All right. Unsigned. Okay. So, you
7 know, I think that that means that they have a
8 verdict.

9 My suggestion is that we do this, that we bring
10 the entire jury in, and I think, one, if the
11 foreman is carrying what looks like the verdict
12 form, it's probably an indication that the jury has
13 a verdict. But in any event, I will ask him if he
14 would tell me whether or not the note, which I will
15 read back to him, means that in speaking for the
16 jury he, the foreperson, has a unanimous verdict to
17 return to the court. And if he says yes, then we
18 go forward.

19 The way I would like to go forward, and what is
20 my standard procedure, especially in lengthier
21 indictments, I would like to explain to the jury
22 that I will take the verdict form, and -- I will
23 have Colleen take it and bring it up here in the
24 presence of the jury. What I would like to do is
25 review it, and then advise everybody if it is in

1 conformity both as to substance and in form.

2 I would like to do it at my conference room
3 just outside the courtroom and send the jury back.
4 I don't like to do it in front of the jury,
5 necessarily. It, I don't think, will take a long
6 time. But I just want to track everything, make
7 sure it's signed, make sure the sequence is
8 correct. If there's an issue in my view with
9 either form or substance, I can then notify all of
10 you, we can discuss it, and then I can bring the
11 jury back, and then address it that way. I think
12 that's the safest way that I know of proceeding.
13 And, you know, I'm not going anywhere. I'm just
14 going to take a look at it and immediately come
15 back out and that's the way I suggest to you that
16 we proceed.

17 From the government's standpoint, Mr. Mango,
18 does that work?

19 MR. MANGO: Yes, your Honor.

20 THE COURT: From the defense standpoint,
21 Mr. Linsin?

22 MR. LINSIN: That is fine with us, your
23 Honor.

24 THE COURT: Mr. Personius?

25 MR. PERSONIUS: Yes, your Honor.

1 THE COURT: Okay. Once I'm done and the
2 jury verdict -- well the jury form will be returned
3 to the foreperson, the foreman of the jury, and
4 then Colleen will read each count individually
5 starting with 1 through 20 and ask for the verdict
6 to be entered, or at least answered to her inquiry
7 for purposes of the record, and then we'll enter it
8 afterwards if that's acceptable to everybody as
9 well. Mr. Mango?

10 MR. MANGO: Yes, your Honor.

11 THE COURT: Mr. Linsin?

12 MR. LINSIN: That's fine.

13 THE COURT: Mr. Personius?

14 MR. PERSONIUS: Yes, your Honor.

15 THE COURT: Okay. All right. We need to
16 notify Chris to bring the jury in, please.

17 Okay. I may have said 1 through -- 1 through
18 20. Did I say that? I meant to say 1 through 19.

19 I will exit with Mr. Moeller too, by the way,
20 if it's okay with everybody, and that will assist
21 me in terms of working through everything. And he
22 stands bodyguard outside the conference room door
23 as well.

24 (Jury seated.)

25 THE COURT: Good afternoon, ladies and

1 gentlemen. Please have a seat. Okay. As all of
2 you know, we are reassembled in the case of United
3 States versus Tonawanda Coke Corporation and Mark
4 Kamholz, defendants. I do have your most recent
5 note which was recorded I think on your
6 correspondence to me at 3:20 p.m. this afternoon.

7 Mr. McDonell, I believe you are the foreman of
8 the jury?

9 THE FOREMAN: Yes.

10 THE COURT: Okay. Would you mind
11 standing, please, just so everybody can clearly
12 hear you. The note is not totally clear. All
13 right. The note reads: "We are done." And, you
14 know, that can probably be interpreted a number of
15 ways. But, I guess from our standpoint, are you
16 reporting that you are authorized on behalf of all
17 of the ladies and gentlemen of the jury to return a
18 unanimous verdict for the Court's consideration?

19 THE FOREMAN: On all counts, yes.

20 THE COURT: Okay. What I'd like to do --
21 and thank you for that clarification. My practice
22 is to have you give your original verdict form to
23 my courtroom deputy, Colleen Demma. She'll take it
24 from you. What I will do then is accept it, and I
25 will send you back to the deliberation room. But I

1 will take it and I will review it to make sure that
2 it's, at least to my review, consistent in form and
3 in substance. And then if there are any issues, I
4 have an opportunity to discuss it with the lawyers,
5 and then I'll bring you back.

6 If there are no issues, I simply bring you
7 back, and then I will have the verdict form
8 returned to you, Mr. McDonnell. And we will take
9 the verdict, and on your authorization that you
10 speak for the jury, we will go through each count
11 individually and separately. It will be read to
12 you by Miss Demma, and then you respond as the
13 foreman of the jury for each count. And then we'll
14 proceed from Count 1 through 19 in that fashion.

15 If everything is in order when that's complete,
16 then the verdict, as a unanimous verdict, will be
17 entered into the record. Is that understood by
18 you?

19 THE FOREMAN: Yes.

20 THE COURT: Okay. I guess the first step
21 in that process, Miss Demma, if you would get the
22 folder that contains I think the verdict form.

23 And the record will reflect that I received in
24 the manila folder the verdict form in this case.

25 I am going to ask you now, ladies and

1 gentlemen, before I go to my conference room to
2 review it, for you to go to the deliberation room
3 and just wait. It should just be a matter of
4 minutes, unless there is an issue I have to discuss
5 with the lawyers. Okay. Thank you very much.

6 (Jury excused from the courtroom.)

7 THE COURT: Okay. You may have a seat
8 I'll be right back.

9 (The Judge left the bench.)

10 (Jury not present in the courtroom.)

11 THE COURT: Okay. The attorneys and
12 parties are back present. I've completed the
13 review of the verdict form, and I find that it
14 appears to be in order both as to form and
15 substance. Given that, I will ask Colleen to
16 notify the security officer to return the jury to
17 the courtroom, and then I will give you, Colleen,
18 the verdict form to return to Mr. McDonell. Okay?

19 THE CLERK: Okay.

20 (Jury seated.)

21 THE COURT: Thank you. Please have a
22 seat. Okay, ladies and gentlemen, I have completed
23 the review of the verdict form. I advised the
24 attorneys that I have found it to appear to be in
25 order as far as form and substance is concerned.

1 I'm going to return the verdict form in its folder
2 to Miss Demma. She will return it to Mr. McDonell.

3 And if you wouldn't mind standing,
4 Mr. McDonell, we would appreciate it.

5 And once again, Mr. McDonell, the verdict that
6 you are about to return you are authorized to do so
7 by the ladies and gentlemen of the jury, is that
8 correct?

9 THE FOREMAN: Correct, sir.

10 THE COURT: Thank you.

11 THE CLERK: On Count 1, violation of the
12 Clean Air Act, pressure relief valve, 2005.

13 From on or about July 29, 2005, to on or about
14 December 31st, 2005, in the Western District of New
15 York, the defendants, Tonawanda Coke Corporation
16 and Mark L. Kamholz, did knowingly operate and
17 cause to be operated a stationary source, to wit,
18 the Tonawanda Coke Corporation, in violation of its
19 Title V permit requirements by emitting coke oven
20 gas from the pressure relief valve in the
21 by-products department, an unpermitted emission
22 source, condition 4 of the Tonawanda Coke
23 Corporation's Title V permit.

24 All in violation of Title 42, United States
25 Code, Section 7413(c)(1) and Title 18, United

1 States Code, Section 2.

2 How do you find on Count 1 as to the defendant
3 Tonawanda Coke Corporation?

4 THE FOREMAN: Guilty.

5 THE CLERK: How do you find on Count 1 as
6 to the defendant Mark L. Kamholz?

7 THE FOREMAN: Guilty.

8 THE CLERK: Count 2, violation of the
9 Clean Air Act, pressure relief valve, 2006.

10 From on or about January 1, 2006, to on or
11 about December 31, 2006, in the Western District of
12 New York, the defendants, Tonawanda Coke
13 Corporation and Mark L. Kamholz, did knowingly
14 operate and cause to be operated a stationary
15 source, to wit, the Tonawanda Coke Corporation, in
16 violation of its Title V permit requirements by
17 emitting coke oven gas from a pressure relief valve
18 in the by-products department, an unpermitted
19 emission source, condition 4 of the Tonawanda Coke
20 Corporation's Title V permit.

21 All in violation of Title 42, United States
22 Code, Section 7413(c)(1) and Title 18, United
23 States Code, Section 2.

24 How do you find on Count 2 as to the defendant
25 Tonawanda Coke Corporation?

1 THE FOREMAN: Guilty.

2 THE CLERK: How do you find on Count 2 as
3 to the defendant Mark L. Kamholz?

4 THE FOREMAN: Guilty.

5 THE CLERK: Count 3, violation of the
6 Clean Air Act, pressure relief valve, 2007.

7 From on or about January 1st, 2007, to on or
8 about December 31st, 2007, in the Western District
9 of New York, the defendants, Tonawanda Coke
10 Corporation and Mark L. Kamholz, did knowingly
11 operate and cause to be operated a stationary
12 source, to wit, the Tonawanda Coke Corporation, in
13 violation of its Title V permit requirements by
14 emitting coke oven gas from a pressure relief valve
15 in the by-products department, an unpermitted
16 emission source, condition 4 of the Tonawanda Coke
17 Corporation's Title V permit.

18 All in violation of Title 42, United States
19 Code, Section 7413(c)(1) and Title 18, United
20 States Code, Section 2.

21 How do you find on Count 3 as to the defendant
22 Tonawanda Coke Corporation?

23 THE FOREMAN: Guilty.

24 THE CLERK: How do you find on Count 3 as
25 to the defendant Mark L. Kamholz?

1 THE FOREMAN: Guilty.

2 THE CLERK: On Count 4, violation of the
3 Clean Air Act, pressure relief valve, 2008.

4 From on or about January 1st, 2008, to on or
5 about December 31st, 2008, in the Western District
6 of New York, the defendants, Tonawanda Coke
7 Corporation and Mark L. Kamholz did knowingly
8 operate and cause to be operated a stationary
9 source, to wit, the Tonawanda Coke Corporation, in
10 violation of its Title V permit requirements by
11 emitting coke oven gas from a pressure relief valve
12 in the by-products department, an unpermitted
13 emission source, condition 4 of the Tonawanda Coke
14 Corporation's Title V permit.

15 All in violation of Title 42, United States
16 Code, Section 7413(c)(1) and Title 18, United
17 States Code, Section 2. How do you find on Count 4
18 as to the defendant Tonawanda Coke Corporation?

19 THE FOREMAN: Guilty.

20 THE CLERK: How do you find on Count 4 as
21 to the defendant Mark L. Kamholz?

22 THE FOREMAN: Guilty.

23 THE CLERK: On Count 5, violation of the
24 Clean Air Act, pressure relief valve, 2009.

25 From on or about January 1st, 2009, to on or

1 about December 31st, 2009, in the Western District
2 of New York, the defendants, Tonawanda Coke
3 Corporation and Mark L. Kamholz, did knowingly
4 operate and cause to be operated a stationary
5 source, to wit, the Tonawanda Coke Corporation, in
6 violation of its Title V permit requirements by
7 emitting coke oven gas from a pressure relief valve
8 in the by-products department, an unpermitted
9 emission source, condition 4 of the Tonawanda Coke
10 Corporation's Title V permit.

11 All in violation of Title 42, United States
12 Code, Section 7413(c)(1) and Title 18, United
13 States Code, Section 2.

14 How do you find on Count 5 as to the defendant
15 Tonawanda Coke Corporation?

16 THE FOREMAN: Guilty.

17 THE CLERK: How do you find on Count 5 as
18 to the defendant Mark L. Kamholz?

19 THE FOREMAN: Guilty.

20 THE CLERK: On Count 6, violation of the
21 Clean Air Act, baffle system, quench tower 1 west,
22 2005.

23 From on or about July 29th, 2005, to on or
24 about December 31st, 2005, in the Western District
25 of New York, the defendants, Tonawanda Coke

1 Corporation and Mark L. Kamholz, did knowingly
2 operate and cause to be operated a stationary
3 source, to wit, the Tonawanda Coke Corporation, in
4 violation of its Title V permit requirements by
5 operating the western quench tower, quench tower
6 number 1, at the coke corporation without a baffle
7 system installed in such quench tower, condition 96
8 of the Tonawanda Coke Corporation's Title V permit.

9 All in violation of Title 42, United States
10 Code, Section 7413(c)(1) and Title 18, United
11 States Code, Section 2.

12 How do you find on Count 6 as to the defendant
13 Tonawanda Coke Corporation?

14 THE FOREMAN: Not guilty.

15 THE CLERK: How do you find on Count 6 as
16 to the defendant Mark L. Kamholz?

17 THE FOREMAN: Not guilty.

18 THE CLERK: On Count 7, violation of the
19 Clean Air Act, baffle system, quench tower 1
20 west, 2006.

21 From on or about January 1st, 2006, to on or
22 about December 31st, 2006, in the Western District
23 of New York, the defendants, Tonawanda Coke
24 Corporation and Mark L. Kamholz, did knowingly
25 operate and cause to be operated a stationary

1 source, to wit, the Tonawanda Coke Corporation in
2 violation of its Title V permit requirements by
3 operating the western quench tower, quench tower
4 number 1, at the Tonawanda Coke Corporation without
5 a baffle system installed in such quench tower,
6 condition 96 of the Tonawanda Coke Corporation's
7 Title V permit.

8 All in violation of Title 42, United States
9 Code, Section 7413(c)(1) and Title 18, United
10 States Code, Section 2.

11 How do you find on Count 7 as to the defendant
12 Tonawanda Coke Corporation?

13 THE FOREMAN: Not guilty.

14 THE CLERK: How do you find on Count 7 as
15 to the defendant Mark L. Kamholz?

16 THE FOREMAN: Not guilty.

17 THE CLERK: Count 8, violation of the
18 Clean Air Act, baffle system, quench tower 1
19 west, 2007.

20 From on or about January 1st, 2007, to on or
21 about December 31st, 2007, in the Western District
22 of New York, the defendants, Tonawanda Coke
23 Corporation and Mark L. Kamholz, did knowingly
24 operate and cause to be operated a stationary
25 source, to wit, the Tonawanda Coke Corporation, in

1 violation of its Title V permit requirements by
2 operating the western quench tower, quench tower
3 number 1, at the Tonawanda Coke Corporation without
4 a baffle system installed in such quench tower,
5 condition 96 of the Tonawanda Coke Corporation's
6 Title V permit.

7 All in violation of Title 42, United States
8 Code, Section 7413(c)(1) and Title 18, United
9 States Code, Section 2.

10 How do you find on Count 8 as to the defendant
11 Tonawanda Coke Corporation?

12 THE FOREMAN: Not guilty.

13 THE CLERK: How do you find on Count 8 as
14 to defendant Mark L. Kamholz?

15 THE FOREMAN: Not guilty.

16 THE CLERK: On Count 9, violation of the
17 Clean Air Act, baffle system, quench tower 1
18 west, 2008.

19 From on or about January 1st, 2008, to on or
20 about December 31st, 2008, in the Western District
21 of New York, the defendants Tonawanda Coke
22 Corporation and Mark L. Kamholz did knowingly
23 operate and cause to be operated a stationary
24 source, to wit, the Tonawanda Coke Corporation in
25 violation of its Title V permit requirements by

1 operating the western quench tower, quench tower
2 number 1, at the Tonawanda Coke Corporation without
3 a baffle system installed in such quench tower,
4 condition 96 of the Tonawanda Coke Corporation's
5 Title V permit.

6 All in violation of Title 42, United States
7 Code, Section 7413(c)(1), and Title 18, United
8 States Code, Section 2.

9 How do you find on Count 9 as to the defendant
10 Tonawanda Coke Corporation?

11 THE FOREMAN: Guilty.

12 THE CLERK: How do you find on Count 9 as
13 to the defendant Mark L. Kamholz?

14 THE FOREMAN: Guilty.

15 THE CLERK: On Count 10, violation of the
16 Clean Air Act, baffle system, quench tower 1
17 west, 2009.

18 From on or about January 1st, 2009, to on or
19 about December 31st, 2009, in the Western District
20 of New York, the defendants, Tonawanda Coke
21 Corporation and Mark L. Kamholz, did knowingly
22 operate and cause to be operated a stationary
23 source, to wit, the Tonawanda Coke Corporation, in
24 violation of its Title V permit requirements by
25 operating the western quench tower, quench tower

1 number 1, at the Tonawanda Coke Corporation without
2 a baffle system installed in such quench tower,
3 condition 96 of the Tonawanda Coke Corporation's
4 Title V permit.

5 All in violation of Title 42, United States
6 Code, Section 7413(c)(1), and Title 18, United
7 States Code, Section 2.

8 How do you find on Count 10 as to the defendant
9 Tonawanda Coke Corporation?

10 THE FOREMAN: Not guilty.

11 THE CLERK: How do you find on Count 10 as
12 to defendant Mark L. Kamholz?

13 THE FOREMAN: Not guilty.

14 THE CLERK: On Count 11, violation of the
15 Clean Air Act, baffle system, quench tower 2 east,
16 2005.

17 From on or about July 29, 2005, to on or about
18 December 31st, 2005, in the Western District of New
19 York, the defendants, Tonawanda Coke Corporation
20 and Mark L. Kamholz, did knowingly operate and
21 cause to be operated a stationary source, to wit,
22 the Tonawanda Coke Corporation, in violation of its
23 Title V permit requirements by operating the
24 eastern quench tower, quench tower number 2, at the
25 Tonawanda Coke Corporation without a baffle system

1 installed in such quench tower, condition 97 of the
2 Tonawanda Coke Corporation's Title V permit.

3 All in violation of Title 42, United States
4 Code, Section 7413(c)(1) and Title 18 United States
5 Code, Section 2.

6 How do you find on Count 11 as to the defendant
7 Tonawanda Coke Corporation?

8 THE FOREMAN: Guilty.

9 THE CLERK: How do you find on Count 11 as
10 to the defendant Mark L. Kamholz?

11 THE FOREMAN: Guilty.

12 THE CLERK: Count 12, violation of the
13 Clean Air Act, baffle system, quench tower 2 east,
14 2006.

15 From on or about January 1st, 2006, to on or
16 about December 31st, 2006, in the Western District
17 of New York, the defendants, Tonawanda Coke
18 Corporation and Mark L. Kamholz, did knowingly
19 operate and cause to be operated a stationary
20 source, to wit, the Tonawanda Coke Corporation, in
21 violation of its Title V permit requirements by
22 operating the eastern quench tower, quench tower
23 number 2, at the Tonawanda Coke Corporation,
24 without a baffle system installed in such quench
25 tower, condition 97 of the Tonawanda Coke

1 Corporation's Title V permit.

2 All in violation of Title 42, United States
3 Code, Section 7413(c)(1) and Title 18, United
4 States Code, Section 2.

5 How do you find on Count 12 as to the defendant
6 Tonawanda Coke Corporation?

7 THE FOREMAN: Guilty.

8 THE CLERK: How do you find on Count 12 as
9 to the defendant Mark L. Kamholz?

10 THE FOREMAN: Guilty.

11 THE CLERK: Count 13, violation of the
12 Clean Air Act, baffle system, quench tower 2
13 east, 2007.

14 From on or about January 1st, 2007 to on or
15 about December 31st, 2007, in the Western District
16 of New York, the defendants, Tonawanda Coke
17 Corporation and Mark L. Kamholz, did knowingly
18 operate and cause to be operated a stationary
19 source, to wit, the Tonawanda Coke Corporation in
20 violation of its Title V permit requirements by
21 operating an eastern quench tower, quench tower
22 number 2, at the Tonawanda Coke Corporation without
23 a baffle system installed in such quench tower,
24 condition 90 of the Tonawanda Coke Corporation's
25 Title V permit.

1 All in violation of Title 42, United States
2 Code, Section 7413(c)(1) and Title 18, United
3 States Code, Section 2.

4 How do you find on Count 13 as to the defendant
5 Tonawanda Coke Corporation?

6 THE FOREMAN: Guilty.

7 THE CLERK: How do you find on Count 13 as
8 to the defendant Mark L. Kamholz?

9 THE FOREMAN: Guilty.

10 THE CLERK: Count 14, violation of the
11 Clean Air Act, baffle system, quench tower 2
12 east, 2008.

13 From on or about January 1st, 2008, to on or
14 about December 31st, 2008, in the Western District
15 of New York, the defendants, Tonawanda Coke
16 Corporation and Mark L. Kamholz, did knowingly
17 operate and cause to be operated a stationary
18 source, to wit, the Tonawanda Coke Corporation, in
19 violation of its Title V permit requirements by
20 operating the eastern quench tower, quench tower
21 number 2, at the Tonawanda Coke Corporation without
22 a baffle system installed in such quench tower,
23 condition 97 of the Tonawanda Coke Corporation's
24 Title V permit.

25 All in violation of Title 42, United States

1 Code, Section 7413(c)(1) and Title 18, United
2 States Code, Section 2.

3 How do you find on Count 14 as to the defendant
4 Tonawanda Coke Corporation?

5 THE FOREMAN: Guilty.

6 THE CLERK: How do you find on Count 14 as
7 to the defendant Mark L. Kamholz?

8 THE FOREMAN: Guilty.

9 THE CLERK: Count 15, violation of the
10 Clean Air Act, baffle system, quench tower 2 east,
11 2009.

12 From on or about January 1st, 2009, to on or
13 about November 15th, 2009, in the Western District
14 of New York, the defendants, Tonawanda Coke
15 Corporation and Mark L. Kamholz, did knowingly
16 operate and cause to be operated a stationary
17 source, to wit, the Tonawanda Coke Corporation, in
18 violation of its Title V permit requirements by
19 operating the eastern quench tower, quench tower
20 number 2, at the Tonawanda Coke Corporation without
21 a baffle system installed in such quench tower,
22 condition 97 of the Tonawanda Coke Corporation's
23 Title V permit.

24 All in violation of Title 42, United States
25 Code, Section 7413(c)(1) and Title 18, United

1 States Code, Section 2.

2 How do you find on Count 15 as to the defendant
3 Tonawanda Coke Corporation?

4 THE FOREMAN: Guilty.

5 THE CLERK: How do you find on Count 15 as
6 to the defendant Mark L. Kamholz?

7 THE FOREMAN: Guilty.

8 THE CLERK: Count 16, obstruction of
9 justice, 2009.

10 From on or about April 14th, 2009, to on or
11 about April 21st, 2009, in the Western District of
12 New York, the defendants, Tonawanda Coke
13 Corporation and Mark L. Kamholz, did corruptly
14 influence, obstruct, and impede and endeavor to
15 influence, obstruct, and impede the due and proper
16 administration of the law under which a pending
17 proceeding was being had before the United States
18 Environmental Protection Agency, EPA, an agency of
19 the United States government, by instructing a
20 Tonawanda Coke Corporation employee to conceal,
21 during an EPA inspection, the fact that a pressure
22 relief valve in the by-products department, during
23 normal operations, emitted coke oven gas to the
24 atmosphere, in violation of the Tonawanda Coke
25 Corporation's Title V operating permit.

1 All in violation of Title 18, United States
2 Code, Sections 1505 and 2.

3 How do you find on Count 16 as to the defendant
4 Tonawanda Coke Corporation?

5 THE FOREMAN: Not guilty.

6 THE CLERK: How do you find on Count 16 as
7 to the defendant Mark L. Kamholz?

8 THE FOREMAN: Guilty.

9 THE CLERK: Count 17, violation of the
10 Resource Conservation and Recovery Act, storage of
11 toxic waste on the ground adjacent to Barrett
12 tanks, 1998 to 2009.

13 From at least in or about May of 1998 to on or
14 about December 17th, 2009, the exact dates unknown,
15 in the Western District of New York the defendants,
16 Tonawanda Coke Corporation and Mark L. Kamholz, did
17 knowingly store and cause to be stored on the
18 ground adjacent to two large deteriorating tanks at
19 the Tonawanda Coke Corporation, a waste exhibiting
20 the toxicity characteristic for benzene, a
21 hazardous waste identified under the Resource
22 Conservation and Recovery Act, RCRA, without a
23 permit to store such hazardous waste as required
24 under RCRA.

25 All in violation of Title 42, United States

1 Code, Section 6928(d)(2)(A) and Title 18, United
2 States Code, Section 2.

3 Count 17 continued. Part A, defendant
4 Tonawanda Coke Corporation.

5 How do you find Count 17 as to the defendant
6 Tonawanda Coke Corporation?

7 THE FOREMAN: Guilty.

8 THE CLERK: As to Count 17, do you find
9 that the defendant Tonawanda Coke Corporation
10 violated the Resource Conservation and Recovery Act
11 every day from on or about May 31st, 1998, to on or
12 about December 17th, 2009?

13 THE FOREMAN: Yes.

14 THE CLERK: How do you find on Count 17 as
15 to the defendant Mark Kamholz?

16 THE FOREMAN: Guilty.

17 THE CLERK: As to Count 17, do you find
18 that defendant Mark Kamholz violated the Resource
19 Conservation and Recovery Act every day from on or
20 about May 31st, 1998, to on or about December 7,
21 2009?

22 THE FOREMAN: Yes.

23 THE CLERK: Count 18, violation of the
24 Resource Conservation and Recovery Act, disposal of
25 toxic waste from in and around the Barret

1 tanks, 2009.

2 From in or about June of 2009 to on or about
3 September 17th, 2009, the exact dates unknown, in
4 the Western District of New York, the defendants,
5 Tonawanda Coke Corporation and Mark L. Kamholz, did
6 knowingly dispose and cause to be disposed a waste
7 exhibiting the toxicity characteristic for benzene,
8 a hazardous waste identified under the Resource
9 Conservation and Recovery Act, RCRA, originating
10 from in and around the two large deteriorating
11 tanks at the Tonawanda Coke Corporation, without a
12 permit to dispose of such hazardous waste as
13 required under RCRA.

14 All in violation of Title 42, United States
15 Code, Section 6928(d)(2)(A) and Title 18, United
16 States Code, Section 2.

17 How do you find on Count 18 as to defendant
18 Tonawanda Coke Corporation?

19 THE FOREMAN: Guilty.

20 THE CLERK: As to Count 18, do you find
21 that the defendant Tonawanda Coke Corporation
22 violated the Resource Conservation and Recovery Act
23 every day from on or about June 30th, 2009, to on
24 or about September 17th, 2009?

25 THE FOREMAN: Yes.

1 THE CLERK: How do you find on Count 18 as
2 to defendant Mark Kamholz?

3 THE FOREMAN: Guilty.

4 THE CLERK: As to Count 18, do you find
5 that the defendant Mark Kamholz violated the
6 Resource Conservation and Recovery Act every day
7 from on or about June 30th, 2009, to on or about
8 September 7, 2009?

9 THE FOREMAN: Yes.

10 THE CLERK: Count 19, violation of the
11 Resource Conservation and Recovery Act, disposal of
12 decanter tank tar sludge K087, 2005 to 2009.

13 From on or about August 2nd, 2005, to on or
14 about December 17, 2009, in the Western District of
15 New York, the defendants, Tonawanda Coke
16 Corporation and Mark L. Kamholz, did knowingly
17 dispose and cause to be disposed decanter tank tar
18 sludge from coking operations, K087, a hazardous
19 waste identified and listed under the Resource
20 Conservation and Recovery Act, RCRA, originating
21 from the by-products department at the Tonawanda
22 Coke Corporation and spread on to the coalfield
23 without a permit to dispose of such hazardous waste
24 as required under RCRA.

25 All in violation of Title 42, United States

1 Code, Section 6928(d)(2)(A) and Title 18 United
2 States Code, Section 2.

3 How do you find on Count 19 as to the defendant
4 Tonawanda Coke Corporation?

5 THE FOREMAN: Guilty.

6 THE CLERK: As to Count 19, do you find
7 that defendant Tonawanda Coke Corporation violated
8 the Resource Conservation and Recovery Act every
9 day from on or about August 2nd, 2005, to on or
10 about December 7th, 2009?

11 THE FOREMAN: Yes.

12 THE CLERK: How do you find on Count 19 as
13 to defendant Mark Kamholz?

14 THE FOREMAN: Guilty.

15 THE CLERK: As to Count 19, do you find
16 that defendant Mark Kamholz violated the Resource
17 Conservation and Recovery Act every day from on or
18 about August 2nd, 2005 to on or about
19 December 17th, 2009?

20 THE FOREMAN: Yes.

21 THE COURT: Thank you, Colleen.

22 Mr. McDonell, on behalf of all of the ladies and
23 gentlemen of the jury as the foreperson -- or the
24 foreman of this jury, is that the entire verdict
25 that you were authorized unanimously to return as

1 to each defendant on each count of this indictment?

2 THE FOREMAN: Yes, it is.

3 THE COURT: Okay. Thank you very much for
4 your service as foreman. We'd like to take the
5 verdict form and the folder. We'll take that. You
6 may have a seat once you give that to Miss Demma.

7 And as to the attorneys for defendant Tonawanda
8 Coke, is there anything additional, Mr. Linsin?

9 MR. LINSIN: Your Honor, I would request
10 that the jury be polled.

11 THE COURT: Okay. Mr. Personius, on
12 behalf of defendant, Mark Kamholz, is there any
13 request?

14 MR. PERSONIUS: We join in that request,
15 your Honor.

16 THE COURT: From the government's
17 standpoint, Mr. Mango?

18 MR. MANGO: No request, your Honor.

19 THE COURT: All right. Thank you. Okay.
20 Ladies and gentlemen, each of you will be asked by
21 Miss Demma, in summary terms by me, whether in fact
22 the verdict rendered as announced by your foreman,
23 Mr. McDonell, is in point of fact your verdict.

24 Miss Demma, if you would poll the jury, please.

25 THE CLERK: Juror number 1, Mrs. Lambert,

1 does your verdict as published constitute your
2 individual verdict in all respects?

3 A JUROR: Yes, it does.

4 THE CLERK: Juror number 2, Mr. Wilson,
5 does your verdict as published constitute your
6 individual in all respects?

7 A JUROR: Yes.

8 THE CLERK: Juror number 3, Mr. Collins,
9 does your verdict as published constitute your
10 individual verdict in all respects?

11 A JUROR: Yes, it does.

12 THE CLERK: Juror number 4, Mrs. Andolina,
13 does your verdict as published constitute your
14 individual verdict in all respects?

15 A JUROR: Yes.

16 THE CLERK: Juror number 5,
17 Mrs. Funderburk, does your verdict as published
18 constitute your individual verdict in all respects?

19 A JUROR: Yes, it does.

20 THE CLERK: Juror number 6,
21 Miss Majerowski, does your verdict as published
22 constitute your individual verdict in all respects?

23 A JUROR: Yes, it does.

24 THE CLERK: Juror number 7, Mr. Bauman,
25 does your verdict as published constitute your

1 individual verdict in all respects?

2 A JUROR: Yes, it does.

3 THE CLERK: Juror number 8,
4 Mrs. Palistrant, does your verdict as published
5 constitute your individual varied in all respects?

6 A JUROR: Yes, it does.

7 THE CLERK: Juror number 9, Mr. McDonell,
8 does your verdict as published constitute your
9 individual verdict in all respects?

10 A JUROR: Yes, it does.

11 THE CLERK: Juror number 10, Miss Russ,
12 does your verdict as published constitute your
13 individual verdict in all respects?

14 A JUROR: Yes, it does.

15 THE CLERK: Juror number 11, Ms. Malyszka,
16 does your verdict as published constitute your
17 individual verdict in all the respects?

18 A JUROR: Yes, it does.

19 THE CLERK: Juror number 12,
20 Mrs. Stelianou, does your verdict as published
21 constitute your individual verdict in all respects?

22 A JUROR: Yes, it does.

23 THE COURT: Okay. The verdict as
24 returned, as published, and as affirmed will be now
25 entered as part of the court record.

1 Ladies and gentlemen, you've been here a long
2 time, and I'm about to discharge you from jury
3 service. By a long time, more than a month is a
4 long time, as you know, right? And what I'm going
5 to ask you to do is this. I know you've put up
6 with me for a long time, but I'd ask you to stay,
7 if you have the time, for just a few minutes
8 afterwards so that I can speak with you in the jury
9 deliberation room. If you cannot stay and you have
10 to leave, I want to thank those of you that leave
11 and let you know on behalf of all of us that we
12 appreciate your service.

13 The duration of the time you spent really
14 doesn't necessarily speak for what we called upon
15 you to do in this particular case. And I suspect
16 that you probably didn't know what it was going to
17 be like to serve as jurors for this period of time
18 in this kind of a case when you started out.

19 And, you know, I watched you every day, and you
20 know that, and we worked together every day, and
21 that's all we can really expect is that you appear
22 to make every single best effort that you can to
23 stay engaged. And this case in many respects by
24 way of subject matter is a very complicated case,
25 because it involves terminology most of you and

1 most of us are not familiar with.

2 And I think there's a lesson in this for all of
3 us, and maybe more graphically to you than anybody
4 else, and I hope that you understand how
5 significant the system of justice is in this
6 country and what it means to be a -- to have a
7 system that lends itself to ensuring that there's a
8 fair administration of justice. That can't be done
9 without the kind of participation that you appeared
10 to devote to this particular case.

11 And there were days when things were tedious,
12 and maybe more than a few days, but I don't think
13 that ever I saw any of you really tune out. You
14 really seemed to make an effort to stay engaged,
15 and I think that's a real compliment and tribute to
16 you.

17 I do want to talk with you, because I think I
18 can learn a lot from you, and that's why I ask you
19 to stay around. But I want you to view the service
20 that you rendered in a way that maybe you wouldn't
21 have thought about from the outset. Your service
22 significantly, not just because of the duration,
23 but what we asked you to do was to ensure that both
24 sides received fair treatment in this case in a
25 very serious case. And I think you'd be hard

1 pressed to disagree with me when I said -- or even
2 think to say that this case wasn't important to
3 both sides. We've talked about that a lot of
4 times. And we talked about your application of
5 common sense and experience and intelligence to
6 resolving the fact issues in this case, and you
7 became as you know, the judges of the facts.

8 But our system of justice is critical. I mean,
9 our country has its shortcomings. Our country is
10 challenged day in and day out. But if you don't
11 have the opportunity to have jurors that are
12 willing to make the contributions that you made
13 over the course of this more than a month to see to
14 it that justice was served, we have a real problem
15 in this country. And I think you've really made a
16 significant, a significant contribution for which
17 all of us are very indebted to you for making that
18 effort.

19 I want to also thank your foreman,
20 Mr. McDonell. I don't know if he was elected to
21 the position or received it by default, which
22 sometimes happens. But it's a serious undertaking,
23 and, I mean, obviously I don't know what took place
24 in your deliberations, because I think the
25 significance of the deliberations is kept

1 confidential, because you know how you have to
2 proceed to get a matter resolved by unanimous
3 verdict. Under any stretch in any case that's --
4 it just can't be easy, and it does take the
5 guidance of somebody that's committed. We thank
6 you, Mr. McDonnell, for serving in that capacity.

7 We thank you on behalf, ladies and gentlemen,
8 of my staff and the attorneys and the parties and
9 if you allow me in particular, me personally, for
10 your service as jurors in this case.

11 So, keep in mind that there's an integrity to
12 the process and to the verdict. And the law in our
13 circuit is you don't have to speak to anybody about
14 this case. And if you are questioned about it, you
15 know, I ask you if by chance you're even tempted to
16 answer any questions, and really the lawyers and
17 everybody else knows the limits of what they can
18 ask you. I don't think you will be asked by
19 anybody, but if you choose to answer any questions,
20 you cannot discuss your deliberations.

21 As far as any other questions or answers,
22 please remember if you answer in any respect, it's
23 a reflection on all of you. I mean, you, I think,
24 bonded as a group. And that requires respect, and
25 also what you do also has a bearing on future

1 juries, because they will be asked to come into a
2 case, maybe as reluctantly as you did from the
3 outset, and they will be called upon to do the kind
4 of significant service that you've been asked to
5 perform and did. So please keep all of that in
6 mind.

7 And certainly we, again, appreciate your
8 efforts, your commitment. You know, it's amazing
9 from my standpoint to have been on the bench for as
10 long as I have and continue to encounter juries
11 that make the commitment to see to it that our
12 country gets a little bit better through the
13 execution of the administration of justice in our
14 third branch of the government.

15 Thank you all very, very much. You are now
16 discharged as a jury. Chris will take you out for
17 the last time. And those of you that can wait for
18 a few minutes, I just have to tidy up a few things
19 with the attorneys, and then after that if you
20 choose to stay around, you'll be free to go. Thank
21 you very much.

22 (Jury excused from the courtroom.)

23 THE COURT: Okay. Please have a seat.
24 Okay. The verdict has been entered, the jury was
25 polled.

1 Are there any other matters that we have to
2 address from the standpoint of the defense,
3 Mr. Linsin?

4 MR. LINSIN: Just consideration of dates,
5 your Honor, that's all I would --

6 THE COURT: I am sorry, say that again.

7 MR. LINSIN: Consideration of dates as to
8 sentencing and where we proceed from here. That is
9 the only issue that I see.

10 THE COURT: Okay. Mr. Personius,
11 anything?

12 MR. PERSONIUS: Your Honor, I expect we
13 will file a Rule 29 motion, and so a date for that,
14 please. And then if you're going to set the
15 sentencing date now, of course, that. But I think
16 the Rule 29 is the next --

17 THE COURT: There's very strict
18 requirements on the filing of the motion, and I'll
19 ask you to be -- I mean goes without saying, that
20 you have to make certain that the time limits are
21 not violated as far as the motions are concerned.
22 And intent to file the motions does not in any way
23 affect the time periods for those motions. So,
24 keep that in mind. Do you have dates, Colleen?

25 Well, the Rule 29 will be first. There's

1 nobody here from probation, right, so I don't have
2 any guidance for that. Set out sentencing for 120
3 days.

4 THE CLERK: Monday July 29th at 9:00 a.m.

5 THE COURT: Okay. That will be the date
6 for sentencing. I think you'll get our sentencing
7 order, which will contain some specific information
8 that you can take into account with respect to the
9 filing -- or the preparation for sentencing
10 purposes. It will be contained in the order.

11 MR. PERSONIUS: Your Honor, forgive me for
12 interrupting. I know I'm going to be out of town
13 for four days, and it's right at the end of July.
14 I didn't bring my calendar. I apologize for not
15 bringing it.

16 THE COURT: Let me set -- go ahead.

17 MR. PERSONIUS: All I was going to ask, is
18 there a possibility it could be later that week?

19 THE COURT: Sure.

20 MR. PERSONIUS: The 1st -- or I know by
21 the 1st I'm back. I'm just not sure.

22 THE COURT: I want to give you date. If
23 you put it over to the next --

24 MR. MANGO: Your Honor, actually, I'm
25 sorry. My wife is actually expecting, so it's

1 right around that date. If we go a little later,
2 that may cause an issue. I don't know if maybe
3 earlier, the middle of July would work. That
4 wouldn't be exactly 120 days, but I think I should
5 be okay in middle -- middle July.

6 THE COURT: All right. Here's what I want
7 to do. I can't tell you that the sentencing will
8 actually take place on that date. I'm going to try
9 to make it as firm as we can. We can set it in mid
10 July.

11 MR. MANGO: Thank you.

12 THE COURT: We will shoot for that date.
13 Does that work from defendant Tonawanda Coke?

14 MR. LINSIN: Well, we will attempt to make
15 it work, your Honor, yes.

16 MR. PERSONIUS: Your Honor, I have a
17 matter scheduled with you, U.S. versus Taher, that
18 is scheduled to start in mid June, and we expect
19 will go for three or four weeks. That would be --
20 this is obviously going to be a significant
21 sentencing, and that would be a hardship for me to
22 run that trial and have to be doing a sentencing.

23 THE COURT: Here's what I'm going to, I'm
24 going to keep it at the middle of July. I
25 understand that you're focusing me on potential

1 conflicts. But that date I think I need in order
2 to get probation started, because it has a wealth
3 of work to do. And then I will work with them to
4 see where they are in the process of getting the
5 information that's required for sentencing. And
6 then I will reconvene everybody and we'll work
7 through the final dates. But I need a date today
8 just to get everything triggered and get everything
9 ready.

10 For purposes of the Rule 29 motion, there's 14
11 days for that under the rule, as you know. So, I
12 will leave that stand. And if there is to be a
13 change in that, it has to be done by written
14 motion. And then that may then affect the
15 flexibility that we have with respect to that time
16 period as I understand it. Okay. That would be
17 the written motion requirement, okay, to satisfy
18 the requirements of the 14-day period for purposes
19 of Rule 29(c)(1).

20 Okay. So we're going to set at this point a
21 14-day period for the filing of your Rule 29
22 motion.

23 THE CLERK: April 11th.

24 THE COURT: April 11th. Once I get the
25 motion, or motions however it plays out, then I'll

1 issue a text order setting the schedule, depending
2 on the request of the defendants for time, and then
3 the government's time to respond, and then we'll
4 have a reply period as well. But I won't set that
5 now until I find out what your respective motions
6 are under Rule 29.

7 MR. LINSIN: All right.

8 THE CLERK: For the sentencing date --

9 THE COURT: You've got it. Those are the
10 two dates I need. You gave me the date 14 days
11 out, right?

12 THE CLERK: The sentencing date we had set
13 July 29th. But you want a mid July date?

14 THE COURT: A mid July date, yes.

15 THE CLERK: July 15th.

16 THE COURT: July 15th, yes.

17 MR. MANGO: Yes, your Honor.

18 THE COURT: At 9:00 a.m.

19 MR. MANGO: Thank you.

20 THE COURT: Okay. All right. I think
21 that wraps everything up from my standpoint. I
22 don't know of anything else, but if there is I'll
23 entertain it now. Mr. Mango?

24 MR. MANGO: No, your Honor. I'd ask that
25 Defendant Kamholz remain on the same conditions

1 pending sentencing.

2 THE COURT: Yes. I will permit that. I
3 take it there's no objection?

4 MR. PERSONIUS: No. Thank you, Mr. Mango.
5 Thank you, Judge.

6 THE COURT: Okay. Okay. That brings this
7 case -- this trial to a conclusion. There's
8 corresponding things that I can say that I'm not
9 going to really get into in an elaboration. I mean
10 you heard what I mentioned to the jury, and I think
11 their participation is very significant. And I
12 think all I want to say really to counsel is that I
13 want to thank you for your professionalism, your
14 cooperation, the dedication that you exhibited as
15 far as your respective clients were concerned.

16 The system works at its very best when the
17 lawyers are the best and where they project into
18 their professional obligations their very best
19 efforts. My observation is that that was done
20 here. And frankly, you made my job as easy as one
21 could expect it to be in a case like this because
22 of your professionalism, your cooperation, your
23 assistance, your enlightened discussions,
24 everything that we worked through in this
25 particular case. I'm not commenting on the result

1 at all. Please don't read anything into my
2 comments. But I think you deserve, from my
3 standpoint, a professional thank you for your
4 cooperation and assistance that made the system
5 serve as best as I think I know that it can serve.

6 And with that, you know, I expect you to make
7 all your deadlines. We'll work with you to make
8 sure that every effort is made to make sure that
9 the final outcome in this case is the proper final
10 outcome. Thank you very much.

11 MR. LINSIN: Thank you, your Honor.

12 MR. PERSONIUS: Thank you, your Honor.

13 MR. MANGO: Thank you, your Honor.

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CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.